

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 25, 2013

Lyle W. Cayce
Clerk

No. 12-30298

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE DOLORES RAMIREZ-MALDONADO,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:11-CR-221-1

Before KING, CLEMENT, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Jose Dolores Ramirez-Maldonado pleaded guilty to illegal reentry of a removed alien. He was sentenced to 84 months in prison, above the advisory range of 46 to 57 months. The district court justified the sentence as a variance under 18 U.S.C. § 3553(a) or a departure from the Guidelines.

Ramirez-Maldonado argues that his 84-month sentence is substantively unreasonable because his convictions for aggravated robbery and murder were used to calculate both his offense level and criminal history. With respect to his

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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specific double-counting argument, Ramirez-Maldonado has not shown any error, as courts may consider factors already accounted for by the Guidelines in determining a sentence outside the recommended range. *See United States v. Brantley*, 537 F.3d 347, 349-50 (5th Cir. 2008). We defer to the district court's decision that the § 3553(a) factors justify the extent of the upward variance. *Gall v. United States*, 552 U.S. 38, 51 (2007). Ramirez-Maldonado's arguments amount to a mere disagreement with the district court and do not warrant reversal. *See id.*

The judgment of the district court is AFFIRMED.